

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21243

Application 31174A of

**Orange County Water District
18700 Ward Street
Fountain Valley, California 92708**

filed on **November 5, 1992**, has been approved by the State Water Resources Control Board (State Water Board or Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Tributary to:

Santa Ana River

Pacific Ocean

within the Counties of **Orange and Riverside**.

2. Location of points of diversion (POD). Points 2 – 8 are also points of rediversion.

By California Coordinate System of 1983, Zone 6	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
POD #1: River Road North 2,281,879 ft. and East 6,152,300 ft.	NW¼ of SE¼	10	03S	07W	SB
POD #2: Imperial Inflatable Dam North 2,258,721 ft. and East 6,090,696 ft.	NW¼ of NW¼	2	04S	09W	SB
POD #3: Below Lakeview North 2,258,463 ft. and East 6,085,460 ft.	SW¼ of NW¼	3	04S	09W	SB
POD #4: Below Tustin Avenue North 2,255,551 ft. and East 6,077,538 ft.	SW¼ of SE¼	5	04S	09W	SB

POD #5: Five Coves Inflatable Dam North 2,253,771 ft. and East 6,073,539 ft.	NE¼ of NE¼	7	04S	09W	SB
POD #6: East of Glassell Street North 2,253,426 ft. and East 6,073,169 ft.	SW¼ of NE¼	7	04S	09W	SB
POD #7: Diversion through Santa Ana River Bottom North 2,258,982 feet East 6,093,998 feet thence various instream percolation areas downstream to	NW¼ of NE¼	2	04S	09W	SB
North 2,244,471 feet East 6,069,748 feet	NW¼ of NW¼	19	04S	09W	SB
POD #8: Prado Dam North 2,270,767 ft. and East 6,138,417 ft.	SW¼ of SW¼	20	03S	07W	SB

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
Municipal, Industrial, Recreational, Fish and Wildlife Preservation and Enhancement	Within the Area overlying the Orange County Groundwater Basin.*					

*The place of use is shown on map dated April 27, 2009, and filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 362,000 acre-feet per annum to be collected to a combination of underground storage and/or surface storage from January 1 to December 31 of each year. The maximum rate of diversion to underground storage via points of diversion 2 through 7 shall not exceed 1,670 cubic feet per second.

(0000005H)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work and the application of water to beneficial use shall be prosecuted with reasonable diligence and be completed by December 31, 2057.
(0000009)
8. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.
(0000010)
9. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
(0000011)
10. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

- (0000012)
11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.
(0000013)
12. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050-2097) or the federal Endangered

Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

13. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(0000015)

14. Permittee shall consult with the Division of Water Rights and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the State Water Board for approval within one year from the date of this permit or such further time as, for good cause shown, may be allowed by the Board. A progress report on the development of a water conservation program may be required by the Board at any time within this period. All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

15. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, Permittee shall, at his expense, have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the state of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director for Water Rights.

(0000030)

16. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the California Department of Fish and Game (CDFG) and Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of Permittee. If a stream or lake agreement is not necessary for this permitted project, Permittee shall provide the Division of Water Rights a copy of a waiver signed by CDFG.

(0000063)

17. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Santa Ana Region, or by the State Board.

(0000100)

18. Prior to diversion of water under this permit, Permittee shall (1) install devices to measure the quantities of water placed into underground storage and (2) install devices to measure or provide documentation of the method to be used to determine the quantity of water recovered from underground storage and placed to beneficial use. All measuring devices and the method of determining the quantity of water recovered from underground storage shall be approved by the State Water Board prior to diversion of water under this permit. All measuring devices shall be properly maintained.

(0080117)

19. The Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.

(0000203)

20. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

21. Prior to implementing the project, Permittee will conduct a Phase I Site Assessment for hazardous waste and soil contamination for the portion of Santiago Creek between Hart Park and the Santa Ana River. Permittee shall comply with recommendations in the Site Assessment to avoid transporting contamination.

If the Site Assessment identifies the potential for contaminated soils to be transported by the project, Permittee will redesign the project to avoid this area or remediate the contamination so that no adjacent properties or the groundwater basin would be adversely affected.

(0400500)

22. Permittee will notify the owners of active production wells within 500 feet of the lower reach of Santiago Creek between Hart Park and the Santa Ana River of its intent to increase recharge of groundwater within Santiago Creek. In coordination with these well owners, Permittee will develop and implement a groundwater monitoring plan similar to the existing plan for the upper reach of the creek that will provide early detection of changes to groundwater chemistry resulting from the project. If the monitoring plan identifies adverse effects to water chemistry, the State Water Board Deputy Director for Water Rights will be notified. The results from periodic groundwater monitoring will be submitted to the Santa Ana Regional Water Quality Control Board.

(0400500)

23. The State Water Board adopts and incorporates by reference into this permit the hydrology and water resources and reporting requirements identified in the Final EIR, specifically Mitigation Measures M-HYDRO-1, M-HYDRO-2, M-HYDRO-3, M-HYDRO-4, M-HYDRO-5, and M-HYDRO-6 (see the attached Table 1). Permittee must implement the measures to mitigate significant impacts to water quality resources and conduct the required reporting and monitoring of those measures. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements necessary to ensure that they will accomplish the stated goal.

(0400500)

24. The State Water Board adopts and incorporates by reference into this permit the mitigation, monitoring, and reporting requirements applicable to biological resources identified in the Final PEIR, specifically Mitigation Measures M-BIO-1, M-BIO-2, M-BIO-3, M-BIO-4, M-BIO-5, and M-BIO-6 (see the attached Table 1). Permittee must implement the measures to mitigate significant impacts to biological resources and conduct the required reporting and monitoring of those measures. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.

(0400500)

25. The State Water Board adopts and incorporates by reference into this permit the mitigation, monitoring, and reporting requirements applicable to cultural resources and hazardous materials identified in the Final PEIR, specifically Mitigation Measures M-CULT-1, M-CULT-2, M-CULT-3, M-HAZ-1, and M-HAZ-2 (see the attached Table 1). Permittee must implement the measures to mitigate significant impacts to cultural resources and hazardous materials, and must conduct the required reporting and monitoring of those measures. The State Water Board reserves jurisdiction to require any reasonable amendments to these measures and requirements to ensure that they will accomplish the stated goal.

(0400500)

a. Come into compliance, no later than December 31, 2011, with all terms of the September 26, 2006 settlement agreement between Permittee and CDFG, as follows:

- (i) Assess sites for Santa Ana sucker (*Catostomus santaanae*) (sucker) re-introduction within the Santa Ana River watershed.
- (ii) Submit a reintroduction and monitoring plan for CDFG and State Water Board Deputy Director for Water Rights (Deputy Director) review and approval. The monitoring plan shall include site specific location information with mapped GIS points, photos and annual reports.
- (iii) Implement sucker re-introduction and monitoring at CDFG approved sites within the Santa Ana River.
- (iv) Assess sites for experimental sucker habitat restoration above River Road Bridge in the Santa Ana River watershed.
- (v) Submit an experimental sucker habitat restoration and monitoring plan for CDFG and Deputy Director review and approval. The monitoring plan shall include site specific location information with mapped GIS points and photos and annual reports.
- (vi) Implement experimental sucker habitat restoration and monitoring at CDFG approved sites within the Santa Ana River watershed.

b. Comply with all terms and dates set out in such subsequent settlement agreement between Permittee and CDFG as supersedes the September 26, 2006 agreement. The terms and dates of any such subsequent settlement agreement are subject to approval of the Deputy Director.

(0430500)

[illegible]

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

James W. Kussel
for *Victoria A. Whitney*
Deputy Director for Water Rights

Dated: **JUN 30 2009**

Attachment

TABLE 1: Mitigation Measures

M-HYDRO-1	Permittee will prepare and implement a Storm Water Pollution Prevention Plan as required for coverage under the statewide National Pollutant Discharge Elimination System construction permit. At a minimum, specific measures should include the following: (1) stockpiles of loose material shall be covered to prevent wind and water erosion and runoff diverted away from exposed soil; (2) concrete wash water will be collected and disposed of in the sanitary sewer; and fuel storage shall be within secondary containment.
M-HYDRO-2	Permittee will prepare and implement a Storm Water Pollution Prevention Plan as required for coverage under the statewide National Pollutant Discharge Elimination System construction permit. At a minimum, specific measures should include the following: (1) stockpiles of loose material shall be covered to prevent wind and water erosion and runoff diverted away from exposed soil; (2) concrete wash water will be collected and disposed of in the sanitary sewer; (3) fuel storage shall be within secondary containment; (4) construction debris including broken concrete will be removed from the creek; (5) construction activities in the creek will not occur during the rainy season; (6) street sweepers will be employed during soil hauling activities to ensure soil is not tracked onto roadways; (7) soil haul trucks will be covered or two feet of freeboard will be maintained.
M-HYDRO-3	Prior to implementing the project, Permittee will conduct a Phase I Site Assessment for hazardous waste and soil contamination for the portion of the Santiago Creek between Hart Park and the Santa Ana River. Permittee will comply with recommendations contained in the Site Assessment to avoid transporting contamination.
M-HYDRO-4	If the Site Assessment identifies the potential for contaminated soils to be transported by the project, Permittee will either redesign the project to avoid this area or remediate the contamination prior to implementation of the project such that no adjacent properties or the groundwater basin would be adversely affected.
M-HYDRO-5	Permittee will notify the owners of active production wells within 500 feet of the lower reach of Santiago Creek between Hart Park and the Santa Ana River of Permittee's intent to recharge groundwater within Santiago Creek. In coordination with these well owners, Permittee will develop and implement a groundwater monitoring plan similar to the existing plan for the upper reach of the creek that will provide early detection of potential changes to groundwater chemistry resulting from the project. If the monitoring plan identifies adverse effects to water chemistry, the recharge operations causing the effect will cease. The results from periodic groundwater monitoring will be submitted to the Santa Ana Regional Water Quality Control Board (RWQCB).

TABLE 1 Mitigation Measures (continued)

M-HYDRO-6	If adverse effects to groundwater quality caused by the recharge project are identified during groundwater monitoring, recharge operations will cease until the condition is resolved.
M-BIO-1	The identified nesting trees will be removed outside the March 1 – July 31 breeding period. Permittee shall conduct pre-construction surveys for nesting birds within 30 days prior to removing the trees. The results of the surveys shall be forwarded to the United States Fish and Wildlife Service and California Department of Fish and Game (CDFG). If the birds are found to be nesting in the trees to be removed during the survey, the tree removal will be delayed until the nests are no longer in use.
M-BIO-2	Permittee shall construct artificial nesting platforms, to replace the number of active nests present during the breeding season before the trees on the island are removed. See Payne and Copes (1990) for successful platform design.
M-BIO-3	Permittee will consult with CDFG prior to removing nesting trees to determine what additional measures, if any, will be required to offset project impacts to the cormorant rookery.
M-BIO-4	Prior to construction within Santiago Creek, Permittee shall obtain a permit from the ACOE pursuant to Section 404 of the Clean Water Act (CWA). The final permit shall be submitted to the Santa Ana RWQCB in application for certification pursuant to Section 401 of the CWA.
M-BIO-5	Prior to construction within Santiago Creek, Permittee shall obtain a Streambed Alteration Agreement from CDFG pursuant to Section 1600 et seq. of the California Fish and Game Code.
M-BIO-6	Prior to construction within Santiago Creek, Permittee shall consult with CDFG to determine any additional notifications or measures required to offset project impacts.
M-CULT-1	Pursuant to <i>CEQA Guidelines</i> 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" will be instituted. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and Permittee shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of Permittee and the qualified archaeologist and/or paleontologist would meet to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

TABLE 1 Mitigation Measures (continued)

M-CULT-2	Prior to excavation, a qualified architectural historian shall conduct a survey of the Hart Park construction area. The historian shall determine the potential significance of the Hart Park parking area. The historian shall prepare a report to determine if the project would be in conformance with the Standards for Treatment of Historical Properties identified in Section 106 of the National Historic Preservation Act. The report will identify the significance of the parking area to be affected by the construction and recommend measures to minimize the potential impact. Measures may include minimizing the construction area to avoid construction impacts to side walls and access routes. The qualified architectural historian will provide oversight of construction activities as necessary to minimize impacts to historical resources.
M-CULT-3	Pursuant to <i>CEQA Guidelines</i> 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" will be curated. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and Permittee shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of Permittee and the qualified archaeologist and/or paleontologist would meet to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.
M-HAZ-1	No refueling of heavy equipment shall be conducted in the creek bed.
M-HAZ-2	Drip pans shall be placed under heavy equipment within the creek bed when not in operation.